

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement" or "MOA") establishes policies, responsibilities, and procedures pursuant to 40 CFR Section 271.8 for the Commonwealth of Virginia (hereinafter "Commonwealth" or "State") Hazardous Waste Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (42 U.S.C. 6901 et seq.), as amended (Public Laws 94-580, 96-482, 98-616), and the United States Environmental Protection Agency Regional Office for Region III (hereinafter "EPA" or the "Agency").

This Agreement further sets forth the manner in which the Commonwealth and EPA will coordinate in the Commonwealth's administration and enforcement of the State Program and, pending Commonwealth authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). For purposes of this Agreement, references to "RCRA" include HSWA.

This Agreement is entered into on behalf of the Commonwealth by the Director of the Department of Environmental Quality (hereinafter "Director") to the fullest extent of his authority to act as a representative of the Commonwealth in his capacity as Director¹, and by the Regional Administrator, EPA Region III (hereinafter "Regional Administrator").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.

Further, nothing in this Agreement shall be construed to restrict the Commonwealth in the administration of the State Program required in the Waste Management Act, §§10.1-1400, *et seq.* of the 1950 Code of Virginia, as amended, or the Virginia Hazardous Waste Management

¹. Unless the context indicates otherwise, the terms "Director" and "Commonwealth" are used interchangeably.

Regulations, Title 9, Environment, Virginia Administrative Code (hereinafter "VAC 20-60-10 et seq.") or other state law.

The Parties will review the Agreement jointly at least once a year (and at other times as appropriate) during preparation of the annual State grant work plan, in connection with grant funding under Section 3011 of RCRA.

This Agreement supersedes the Agreement which was effective on December 18, 1984. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State Program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the Director and Regional Administrator. This Agreement will remain in effect until such time as Commonwealth's program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Section 271.22 and 40 CFR Section 271.23.

This Agreement shall be executed by the Director and the Regional Administrator and shall become effective at the time the Commonwealth's authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the Commonwealth.

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the Commonwealth assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the Commonwealth is not authorized to act. The Director and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective administration of the State Program. The Commonwealth will conduct its hazardous waste program consistent with existing EPA program policies and guidance², and

² These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; revised Hazardous Waste Civil Enforcement Response Policy (March 1996); and the EPA Policy on Performance Based Assistance (May 31, 1985); and the May 1, 1996 Advanced Notice of Proposed Rulemaking for the Corrective Action Program; Setting Customer Service Standards (E.O. 12862, September 11, 1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E.O. 12892, February 11, 1994); EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

intends to follow future EPA program policies and guidance, consistent with Commonwealth law and regulations.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States with the exception of Section 3006(f), Availability of Information, which cannot be implemented by EPA in authorized States. While EPA retains responsibility for the direct implementation of those provisions of HSWA which the State is not authorized to implement, it is the intention of EPA and the Commonwealth to coordinate the implementation of such provisions to the greatest degree possible.

EPA will execute its required oversight functions of the authorized State Program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on the desirable technical support and targets for joint efforts to prevent and to mitigate environmental problems associated with the improper management of hazardous wastes.

Oversight functions will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and mid-year and annual reviews of the State Program.

Procedures used by the Commonwealth in approving variances, waivers or petitions in 9 VAC-20-60-10 et seq. must be equivalent to those used by EPA in granting variances, waivers or petitions to the Federal Regulations. The Commonwealth will transmit to EPA a copy of all variances, waivers and petitions at the time they are approved.

EPA recognizes at VAC 20-60-1390 that the Commonwealth refers petitioners for variances from the classification as a solid waste to the EPA Administrator. EPA may elect not to process such variances.

EPA will continue to process delisting petitions; however, EPA agrees to include the Commonwealth in all pre-petition discussions with petitioners, and EPA will notify the Commonwealth within a reasonable time of receiving a petition to delist a waste from a specific facility in Virginia, pursuant to 40 CFR Part 260.22. The Director, or his designee, will inform EPA in writing of the Commonwealth's intent to participate in EPA's review and evaluation of the delisting petition. Delisting petitioners in the Commonwealth will submit delisting petitions to the Regional Administrator and to the Director. In the event that these petitions are submitted to the Commonwealth in lieu of EPA, the Commonwealth will retain a copy and immediately forward the petition to EPA. When a petition is submitted to EPA, EPA will notify the petitioner

of the need to submit a copy of the petition to the Commonwealth. Should EPA require the assistance of the Commonwealth in the review of the petition, this work sharing activity will be negotiated at the time the annual grant work plan is being negotiated, or subsequently as an additional element to be added to or substituted into the work plan.

EPA will notify the Commonwealth prior to publishing a proposed delisting determination in the Federal Register, and again notify when the final determination is made. A copy of the Federal Register Notice announcing EPA's tentative determination will be provided to the Commonwealth. EPA will notify the Commonwealth if any public comments are received on EPA's tentative determination and provide copies if requested. As necessary, and if requested, EPA agrees to coordinate with the Commonwealth in the development of any response to comments. A copy of EPA's final determination on the petition, as published in the Federal Register, will be provided to the Commonwealth. If the Commonwealth concurs with an affirmative EPA decision on a delisting petition, the Director agrees to follow appropriate state procedures to officially incorporate EPA's rulemaking decision into the Commonwealth's program. When EPA approves a delisting petition after the appropriate public comment period, the Commonwealth will notify the facility that it must petition the Commonwealth for a variance from the definition of hazardous waste. The Commonwealth will review and reach a case decision on the variance requests in accordance with the Virginia Administrative Process Act so that the Commonwealth can recognize EPA's approved exclusion until such time as the Commonwealth is able to propose incorporation of the exclusion into its regulations during the next Commonwealth rulemaking opportunity. The Commonwealth will inform the Regional Administrator when the final action has been completed in accordance with the Virginia Administrative Process Act.

III. STATE PROGRAM REVIEW

A. General

The Regional Administrator will assess the Commonwealth's administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this Agreement, and with all applicable Federal requirements and policies for the adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this Agreement and the State grant work plan, permit overview, compliance and enforcement overview, and mid-year and end-of-year reviews of State Program activities.

The Regional Administrator may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the Commonwealth.

To ensure effective program review, the Commonwealth agrees to give EPA access to all files used in the administration of the program requested by the Regional Administrator which are deemed necessary by EPA to review and evaluate the state program and enforcement. The Commonwealth does not waive any privileges it may assert in litigation under the Federal Rules of Civil Procedure.

Review of Commonwealth files may be scheduled at quarterly intervals; however, the Commonwealth agrees to allow EPA access to specific files more frequently as warranted, i.e., for enforcement actions. Program review meetings between the Director and the Regional Administrator, or their designees, will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless otherwise agreed to by EPA and the Commonwealth. A tentative agenda for the meeting will be prepared in advance by EPA.

B. Identification of Priority Activities

The Commonwealth and EPA agree to develop, on an annual basis as a part of the State grant work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on Agency program guidance and priorities of the Commonwealth, and will serve to identify those activities which should receive the highest priority during the grant period.

Activities which could be considered high priority include, but are not limited to, facilities to be inspected, facilities to be permitted, and enforcement against facilities with known or suspected contamination which pose a risk to human health or the environment.

IV. INFORMATION SHARING

A. General

1. As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement, the Director and the Regional Administrator, or their designees, will carefully examine the following information sharing provisions for needed revision.
2. EPA and Commonwealth responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information System (RCRIS) are specified in the RCRIS Memorandum of Understanding (MOU) negotiated between EPA Region III and the Commonwealth and in the annual State workplan. It is expected that RCRIS will be replaced by "RCRAInfo" in calendar year 2000. Examples of responsibilities that will be addressed in the RCRIS MOU include, but are not limited to, the following:

- a. Processing hazardous waste notification forms.
- b. Issuing EPA identification numbers.
- c. Submission and use of compliance and enforcement information data.
- d. Submission and use of corrective action information.

B. EPA

1. EPA will keep the Commonwealth informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. EPA will also provide general technical support to the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA from the data submitted through Commonwealth reporting requirements.
2. The Commonwealth and EPA have agreed to a joint permitting process (see Section V.D. of this Agreement, "Joint Permitting Process"). Under this process, the Commonwealth and EPA have established policies and procedures by which each will pursue its respective and/or joint responsibilities under HSWA.
3. The Commonwealth and EPA agree to the sharing of information as specified in this Agreement and in the annual State grant work plan. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:
 - a. Part A and Part B Permit Applications, whether received prior to the effective date of this Agreement or subsequent to the effective date of this Agreement and whether first received by the Commonwealth or EPA;
 - b. Such other information necessary to support the foregoing information;
 - c. Copies of draft permits, proposed permit modifications, public notices;
 - d. Copies of final permits and permit modifications; and
 - e. Notices of permit denials.
4. EPA will make available to the Commonwealth other relevant information, as requested, which the Commonwealth needs to implement its approved program. EPA will provide information to the Commonwealth, subject to the terms of 40 CFR Part 2.

5. As resources allow, EPA agrees to provide training to the Commonwealth whenever the Commonwealth requests it.
6. As resources allow, EPA agrees to provide technical assistance to the Commonwealth in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc., on request.
7. EPA agrees to follow the delisting procedures as outlined in the last paragraph of Section II, Policy Statement.

C. Commonwealth

1. The Commonwealth agrees to inform the Regional Administrator with as much advance notice as possible of any proposed program changes which would affect the Commonwealth's ability to implement the authorized program. Program changes of concern include modifications of the Commonwealth's legal authorities (i.e. statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). The Commonwealth recognizes that program revisions must be made in accordance with the provisions of 40 CFR Section 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.
2. EPA and the Commonwealth will agree on the type and frequency of reports the Commonwealth will make in order for EPA to maintain oversight of the implementation of the Commonwealth's authorized program. A specific enumeration of reports and their frequency shall be included in the annual grant work plan and shall be regarded as a grant commitment for the Commonwealth. Such reporting shall include, but not be limited to, the following:
 - a. Government Performance Results Act ("GPRA") goals and accomplishments.
 - b. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the Commonwealth as specified in the RCRA Guidance by October 1 of each even-numbered year.
 - c. Copies of inspection reports, record reviews, and sampling results, along with a RCRIS/RCRAInfo reporting form, for all land disposal facilities, commercial facilities, treatment or storage facilities ("TSFs"), large quantity generators ("LQGs"), Federal facilities and non-notifiers. For small quantity generators ("SQGs"), the above reports need only be submitted where there are detected violations.

- d. Copies of all enforcement actions, orders and judgments, along with a RCRIS/RCRAInfo reporting form, regarding land disposal facilities, commercial facilities, non-notifiers, TSFs, Federal facilities, generators and SQGs.
 - e. Reports containing statistical summaries of each quarter's accomplishments, listed by category and EPA identification number, for compliance and enforcement. One report that incorporates statistical information from all sub-regions should be submitted.
 - f. Submittal of information to correct data problems and information which is incomplete or inaccurate.
 - g. Compliance monitoring and inspection commitment charts.
 - h. Additional reports as negotiated in the annual State grant work plan.
- 3 Pursuant to 40 CFR §271.8, EPA reserves the right to request any information it deems necessary (relative to the Commonwealth's approved program) in a manner to be specified in the annual grant work plan.
4. The Commonwealth agrees to follow the delisting procedures as outlined in the last paragraph of Section II, Policy Statement.
5. The Commonwealth agrees to provide EPA with a copy of each Commonwealth decision [if applicable] regarding variances, waivers, and delisting petitions at the time such requests are granted.
6. The Commonwealth agrees to provide permit and closure information to EPA as specified in the annual State grant workplan. A listing of the required information and a submittal schedule will be included in the annual grant work plan and shall be regarded as a Commonwealth grant commitment. Examples of the required information include, but are not limited to, the following:
- a. Copies of permit applications originally submitted to the Commonwealth and subsequent revisions or additions to these applications on or after the effective date of this Agreement, by all hazardous waste management facilities in the Commonwealth, unless EPA has been copied by the facility;
 - b. Copies of trial burn plans, trial burn plan approvals, and trial burn reports, risk assessment protocols and risk assessment reports;
 - c. Copies of (a) draft permits, (b) proposed permit modifications, (c) draft permit denials, and (d) accompanying explanatory material for all hazardous waste

management facilities in the Commonwealth. EPA also may request copies of completeness and technical reviews for selected permits being worked on during the fiscal year;

- d. Copies of all final permits issued, denied, modified, reissued or terminated;
- e. The following closure/post-closure data:
 - (i) Copies of the public notices announcing receipt of closure/post-closure plans and public hearings, if applicable;
 - (ii) Copies of the approved closure and post-closure plans for all facilities;
 - (iii) Copies of the closure certifications for facilities by an independent registered professional engineer (or an independent qualified soil scientist in cases of land treatment facilities) and the owner or operator;
 - (iv) Copies of the Commonwealth's reports of inspections conducted during closure and after receipt of closure certification; and
 - (v) Copies of the notice placed in the property deed, or other instrument which is normally examined during a title search, for closed disposal facility/unit or cell.
- 7. The Commonwealth may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc., EPA will honor such requests as resources allow. The priorities for permitting will be reviewed annually during the development of the State work plan.
- 8. The Commonwealth agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
- 9. The Commonwealth agrees to provide any pertinent information relating to the State Program requested by the Regional Administrator or his designee within a mutually agreed upon time frame, as necessary, for EPA to carry out its oversight responsibilities. Unless otherwise agreed upon, or specified, the above information shall be sent to:

U.S. Environmental Protection Agency
Region III
Virginia Program Manager, 3WC21
1650 Arch Street
Philadelphia, PA 19103-2029

D. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. These data are used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain information, EPA will first seek to gain this information from the Commonwealth. The Commonwealth agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the Commonwealth is unable to provide the information or if it is necessary to supplement the Commonwealth information, EPA may conduct a special survey or perform information collection site visits after notifying the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

E. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify, by telephone, the other party(ies) to this Agreement of the existence of such situation.

1. For the Commonwealth, during office hours, Department of Environmental Quality (DEQ) Headquarters, 804-698-4000 [TDD 804-698-4021; FAX 804-698-4500] or 1-800-592-5482, after hours emergencies contact the DEQ regional office or the Department of Emergency Services (DES), 1-800-468-8892. DEQ offices and DES are in local blue pages of phone directories.
2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

F. Confidentiality

1. The Commonwealth agrees to give EPA access to all files used in the administration of the program requested by the Regional Administrator which are deemed necessary by EPA to review and evaluate the state program and enforcement. The Commonwealth does not waive any privileges it may assert in litigation under the Federal Rules of Civil Procedure.
2. EPA agrees to furnish to the Commonwealth information in its files which is not submitted under a claim of confidentiality and which the Commonwealth needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the Commonwealth information submitted to EPA under a claim of confidentiality which the Commonwealth needs to implement its program. All information EPA agrees to transfer to the Commonwealth will be transferred in accordance with the requirements of 40 CFR

Part 2. EPA will notify affected facilities when such information is sent to the Commonwealth.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State Program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the Commonwealth is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the Commonwealth's authorized program, EPA will issue and enforce RCRA permits in the Commonwealth for these new regulations until the Commonwealth receives final authorization for equivalent and consistent Commonwealth standards. If EPA promulgates new standards requiring a permit modification, then EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until such time that the Commonwealth receives authorization for the new standards. At the time the State Program is approved in the new areas, EPA will suspend issuance of Federal permits in the Commonwealth.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the State in the new areas until the State receives authorization of equivalent and consistent State standards. At the time the State Program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the State within thirty (30) days of the approval of the State Program or other mutually agreed upon schedule in conformance with the conditions of this Agreement.

The Commonwealth and EPA have agreed to a joint permitting process for the joint processing and enforcement of permits for those provisions of HSWA for which the Commonwealth does not have authorization. As the Commonwealth receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the Commonwealth for those provisions.

B. EPA Overview of Commonwealth Permits and Corrective Action Decisions

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the Commonwealth or EPA in the Annual State Grant work plan or identified as a priority in EPA National Guidance. Typically, EPA will informally discuss comments it may have on draft permits or proposed permit modifications with the Commonwealth and informally seek resolution to such comments. If informal resolutions to EPA's comments are not achieved to EPA's satisfaction, EPA may submit formal comments pursuant to 40 CFR Section 271.19 as described below.

EPA shall notify the Commonwealth of its intent to comment on a Commonwealth draft permit within thirty (30) days of receipt. Should the Commonwealth require EPA's assistance in reviewing portion of the draft permit prior to the public comment period, these sections will be provided to EPA at the time the review is needed. As resources allow, EPA will review the draft permit within a mutually agreeable time frame and provide comments to the Commonwealth by the agreed-upon deadline. EPA will comment within forty-five (45) days of receipt or will request an extension for these comments as warranted.

In accordance with 40 CFR Section 271.19, EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State Program, EPA shall include in the comment:

1. a statement of the reasons for the comment (including the section of the Commonwealth law or regulations that support the comment); and
2. the actions that should be taken by the Commonwealth in order to address the comments (including the conditions which the permit would include if it were issued at EPA.)

EPA shall send a copy of its written comments to the permit applicant in accordance with 40 CFR Section 271.19(c).

The Commonwealth and EPA will usually reach concurrence on permit conditions prior to issuance of the draft permit or approval of proposed permit modifications. EPA shall withdraw such comments if satisfied that the Commonwealth has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

The Director and the Regional Administrator agree that they or their designees will meet or confer whenever necessary in a timely manner to resolve a disagreement between their staffs on the terms of any RCRA permit to be issued by the Commonwealth. Unless otherwise agreed to, the Commonwealth and EPA will work towards resolving all issues within thirty (30) days.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State Program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR Section 271.19(e), and any other applicable authorities.

EPA may review file information at Commonwealth offices or request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet, and any supporting documentation that went into the development of the draft permit. The

Commonwealth will provide such information within one (1) week of request or within a mutually agreed-upon time frame.

C. State Permitting

The Commonwealth is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage and disposal facilities contained in the authorized provisions of the State Program. The Commonwealth shall do so in a manner consistent with RCRA, as amended by HSWA, this Agreement, all applicable Federal requirements, the State Program Description, the annual State grant work plan, and other state requirements. The Commonwealth commits to meet the 2005 GPRA RCRA permitting goal, which requires that at least 90% of existing hazardous waste management facilities have approved controls in place to prevent dangerous releases to air, soil and groundwater.

Under 9 VAC-20-60-270 C, the Director is given authority to determine whether a regulatory conflict exists between Part XI (9VAC 20-60-960 et seq.) and 9 VAC 20-60-270 (federal code 40 CFR Part 270 adopted by reference). Unless the requirements of Part XI and 9 VAC 20-60-270 are mutually exclusive, compliance with both is required. The regulations in Part XI and 9 VAC 20-60-270 having been reviewed, no mutually exclusive conflict has been identified between these two sets of regulations. In accordance with 9 VAC 20-60-270C, no such conflict shall be assumed to exist.

The Commonwealth agrees to issue, modify or reissue all permits contained in the authorized portions of the State Program in accordance with Va. Code Sections 10.1-1426, -1427; Va. Code Section 9-6.14:11 through 6.14:14; and 9 VAC 20-60-124, 20-60-270, and 20-60-960 through -1250 and to include as permit conditions all applicable provisions of 9 VAC 20-60-264, 20-60-266, and 20-60-268. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

In permits issued pursuant to the Commonwealth's authorized hazardous waste management program, the Director will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clearly measurable and definable thereby lending themselves to greater enforceability. For example: "Conduct periodic inspections" should be replaced with "Inspect on a daily/weekly/biweekly/monthly basis. A log book documenting inspections shall be maintained at the facility for a period of 3 years."

The Commonwealth's permitting process will conform to Va. Code Section 9-6.14:11 through 9-6.14:14; and 9 VAC 20-60-124, 20-60-270, and 20-60-960 through 20-60-1250.

In the event circumstances arise which warrant such action, the Commonwealth may exercise the variance authorities established in Va. Code Section 10.1-1402(11); and 9 VAC 20-60-1370 through -1430. The Commonwealth agrees to provide EPA with a copy of each Commonwealth

decision regarding waivers, variances and delisting petitions at the time such requests are granted. The Commonwealth agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result would remain not less stringent than and consistent with the Federal program.

The Commonwealth agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

The Commonwealth agrees to consider all comments EPA makes on permit applications and draft permits. The Commonwealth will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

The Commonwealth agrees to maintain a list of all approved permit modifications and must publish a notice once a year in a Commonwealth-wide newspaper that an updated list is available for review. This list will be submitted to EPA annually.

The Commonwealth agrees to perform the permitting and Corrective Action activities for facilities for which the Commonwealth has taken the lead as specified each year in the grant work plan as negotiated with EPA. The Commonwealth also agrees to support EPA Corrective Action efforts for facilities where EPA retains the lead authority as negotiated in the annual grant work plan.

D. Joint Permitting Process

Pursuant to Section 3006 (g)(1), and in accordance with HSWA, EPA has the authority to issue or deny permits or those portions of permits to facilities in the Commonwealth of Virginia for the requirements and prohibitions in or stemming from HSWA, until the State Program is amended to reflect those requirements and prohibitions, and authorization is received for the portion or portions of the program.

EPA and the Commonwealth have agreed to establish a joint permitting process in accordance with Section 3006(c)(3) of RCRA. Details of joint permitting activities will be negotiated yearly through the annual State grant work plan. The duties and responsibilities of EPA and the Commonwealth for joint permitting shall also be specified in the annual State grant work plan.

The details of the joint permitting process as contained in the State grant work plan shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the Commonwealth for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the annual State grant work plan shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the

execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of the HSWA.

EPA oversight of Commonwealth corrective action decisions will be performed on an ongoing basis throughout each grant fiscal year and will be in accordance with work sharing responsibilities established in the annual grant work plan. The Commonwealth agrees to strive to meet its share of EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the annual grant work plan. The Commonwealth will submit to EPA copies of draft corrective action decision documents (e.g., approvals of reports/work plans, disapproval comment letters, permit modifications, permits and orders, statement of basis for proposed remedy and final remedy decision) within seven (7) days of EPA's request. The Commonwealth will consider EPA comments in final corrective action decisions and will submit copies of all final corrective action decision documents to EPA within seven (7) days of issuance.

VI. PERMIT ADMINISTRATION

A. EPA

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the Commonwealth until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal portions of the permits while they remain in force. Upon authorization of HSWA regulations, the EPA and the Commonwealth will work toward establishing Commonwealth authorities that will allow Commonwealth oversight and enforcement in addition to the Federal. Prior to authorization of additional authorities, EPA and the Commonwealth may establish interim agreements which will allow Commonwealth work sharing activities. When the Commonwealth either assumes full responsibility of an EPA permit or incorporates the terms and conditions of the Federal permits in Commonwealth RCRA permits or issues Commonwealth RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the Commonwealth to enforce those terms and conditions subject to the terms of an acceptable Commonwealth/EPA Enforcement Agreement as provided in Section VII.

B. Commonwealth

The Commonwealth agrees to review all hazardous waste permits which were issued under Commonwealth law prior to the effective date of this Agreement in accordance with 40 CFR 271.13(d), and to modify, or revoke and reissue, such permits as necessary to require compliance with the amended State Program as resources allow or as otherwise negotiated in the annual grant work plan. At a minimum, the new requirements will be incorporated when these permits are reissued by the Commonwealth. The Commonwealth shall notify EPA of any permits not equivalent to federal permit requirements, including any permits that have been issued but are

pending administrative or judicial appeal. Permits issued by EPA will remain in effect under EPA's administration until Federal permit responsibility is formally transferred to the Commonwealth as described in paragraph 3 of the EPA/Commonwealth Corrective Action Transition Plan in Section VI.C, and EPA terminates the Federal permit (or Federal portion of the permit) pursuant to 40 CFR 124.5(d), or until such permit expires, at which time the Commonwealth will reissue a new permit, incorporating all applicable requirements for which the Commonwealth is authorized.

Where the Commonwealth permit is not equivalent to federal permit requirements, the Commonwealth may modify, or revoke and reissue, its permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the Commonwealth does not modify, or revoke and reissue, a permit equivalent to the federal permit, EPA will administer and enforce its permit until it expires or is terminated.

Subsequent to the effective date of an equivalent Commonwealth permit, EPA will terminate the federal permit pursuant to 40 CFR 271.8(b)(6) and 124.5 (d). EPA will notify the permittee by certified mail of its intent to terminate the federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

The Commonwealth agrees to resolve all State Program permit appeals in a manner consistent with its authorized RCRA program.

Pursuant to its authorized program, the Commonwealth will be responsible for the issuance and enforcement of any new corrective action permits. In general, EPA will continue to administer and enforce corrective action permits it has issued until they expire or are terminated by EPA because it is agreed the Commonwealth has assumed full responsibility to administer EPA's permit, or has modified or issued a permit that is equivalent to EPA's corrective action permit. Administration of the corrective action facility universe will be divided between EPA and the Commonwealth in accordance with the mutually agreed upon Corrective Action Transition Strategy and the annual grant work plan. The annual grant work plan will revise the division of the facility universe as necessary and detail the work to be performed on permit issuance and corrective action work sharing activities. The Commonwealth agrees to strive to meet its share of EPA's 2005 GPRA goals for corrective action environmental indicators, of which details will be established in the annual grant work plan.

C. EPA/Commonwealth Corrective Action Transition Plan

The following discussion addresses the strategy developed by EPA and the Commonwealth to begin the transition of the responsibilities and workload for corrective action permits to the Commonwealth, pursuant to EPA authorization of Virginia's corrective action program. EPA's authorization of the Commonwealth's corrective action program, and provisions of this MOA, relate to corrective action permitting responsibilities under RCRA Sections 3004 (u) and (v).

To begin the transition, both parties agree that EPA will initially retain responsibility for the administration of EPA-issued corrective action permits. Although the Commonwealth has legal authority to directly assume EPA-issued permits, the Commonwealth will focus its attention on the development and issuance of corrective action permits at the remaining, unpermitted high priority RCRA facilities. Once high priority RCRA sites are addressed and it is determined that GPRA goals will be achieved, facilities with medium and low priorities will be addressed.

Since the enactment of HSWA, EPA has managed all RCRA corrective action activities in the Commonwealth. After authorization of the Commonwealth's corrective action program, EPA will begin the transfer of RCRA corrective action permit responsibilities and workload to the Commonwealth. EPA intends to work with the Commonwealth to determine when and how best to accomplish this task in order to minimize disruption of ongoing corrective action work and to achieve the best possible program outcomes. Factors which EPA and the Commonwealth will consider include: EPA's continued authority to administer EPA-issued corrective action permits after authorization; EPA's investment in, and knowledge of, ongoing corrective action permit activities at several RCRA facilities in the Commonwealth; the need to attain national corrective action program goals established under the GPRA; available resources, skill and experience in the Commonwealth's base program and corrective action program; and the existence of EPA corrective action authorities beyond those related to permits (i.e., RCRA § 3008(h)). For example, major decision points reached in the administration of an EPA permit (e.g., remedy selection) might suggest consideration of transferring lead permit responsibility to the Commonwealth for the next phase of corrective action. Similarly, the addition of several new employees to the Commonwealth's corrective action program might suggest a greater workload shift from EPA to the Commonwealth.

Regardless of which agency assumes a formal program leadership role on a site-by-site basis both parties agree to continue to communicate about, and coordinate (including work sharing), respective corrective action activities at RCRA facilities. Where either party can offer management, programmatic or technical assistance to assist the other in meeting site-specific objectives or mutual program goals, such support will be provided to the extent resources and competing priorities allow. To the degree possible, specific plans and expectations to coordinate respective corrective action activities will be negotiated in annual RCRA grant work plans.

Although site-specific corrective action work sharing activities will be defined in annual grant work plans, the following is a general description of the universe of high priority RCRA facilities in the Commonwealth subject to corrective action and the initial distribution of workload between EPA and the Commonwealth:

- There are 50 high priority RCRA facilities in the Commonwealth subject to corrective action under Sections 3004(u) or 3008(h) of RCRA. As of September 1999, four (4) facilities have completed corrective action, leaving 46 high priority sites to be addressed.

- Fifteen (15) of these sites are currently conducting corrective action work under 3008(h) orders issued by EPA and another 12 are potentially subject to 3008(h) authorities. EPA retains authority and lead responsibility for all corrective action activities pursuant to section 3008(h) of RCRA. If mutually agreed to, the Commonwealth can negotiate corrective action support activities for EPA at facilities subject to RCRA Section 3008(h) through annual grant work plans.

- There are four (4) facilities currently operating under EPA-issued corrective action permits. Initially, EPA will retain responsibility for these facilities until the timing and process for effective transfer to the Commonwealth are mutually agreed upon. Until such time as formal transfer of EPA permit responsibility to the Commonwealth occurs and EPA terminates its permit, EPA and the Commonwealth agree to the joint administration (e.g. modifications) of the EPA and Commonwealth permits so they remain consistent over time.

- 1) Dupont Spruance
- 2) Dupont Waynesboro
- 3) Mobil Manassass Terminal
- 4) Radford

-The Commonwealth will assume corrective action permit responsibility for the following twelve (12) facilities. These facilities will be permitted by the Commonwealth based on their environmental priority status and in accordance with GPRA program goals.

- 1) Cook Composites
- 2) ITT Teves
- 3) Safety Kleen Chester
- 4) Solite-Arvonja
- 5) Union Camp Corporation
- 6) Solite-Cascade
- 7) Wheelabrator
- 8) Wilson Jones
- 9) Federal Mogul
- 10) Newport News Shipbuilding
- 11) BASF
- 12) Koppers Salem

-The Commonwealth has issued state orders to address post-closure care at the remaining three (3) facilities due to complications in the post-closure permitting process. The Commonwealth will assume non-authorized lead oversight responsibility for corrective action at the following facilities until such time as the Commonwealth adopts and is authorized for EPA's "Alternative to Post-Closure" rule (63 FR65874 11/30/98).

- 1) Keller Aluminum
- 2) Sterling Casket
- 3) Wood Preservers

Medium and low priority facilities will generally be permitted once high priority facilities are addressed and GPRA program goals are secure.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

Both EPA and the Commonwealth are committed to maintaining a "level playing field" and establishing a credible deterrence to non-compliance throughout the regulated community. As a result, EPA and the Commonwealth will work together to develop and implement a plan to coordinate compliance monitoring and enforcement activities. These activities may include but are not limited to identifying Federal and State priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and State enforcement actions against significant non-compliers ("SNCs") and Secondary Violators as defined in the EPA's Enforcement Response Policy dated March 1996.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance and the State's annual grant work plan, which is consistent with all applicable Federal requirements and with the State Program Description.

A. EPA

1. Compliance Monitoring

Nothing in the Agreement shall restrict EPA's right to inspect any regulated hazardous waste facility. Before conducting an inspection of a regulated facility, the Agency will normally give the Commonwealth at least seven days notice of EPA's intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period. The Commonwealth may participate in all inspections conducted by EPA. EPA oversight and training inspections will be coordinated with the Commonwealth.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the Commonwealth, the lead agency of an inspection will routinely be the lead in any enforcement action to address RCRA violations discovered during the inspection. However, it is recognized that it may be more appropriate in some cases to defer action to the other agency. Discussion and mutual agreement will be sought in such cases.

2. Enforcement

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008. EPA may also take enforcement action at facilities upon determining that the Commonwealth has not taken timely or appropriate enforcement in accordance with the 1996 Hazardous Waste Enforcement Response Policy and the 1999 Virginia Department of Environmental Quality Enforcement Manual. EPA reserves its right to take independent enforcement in the Commonwealth to the extent permissible under Federal law. In instances where the Commonwealth has referred an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action. Prior to issuing a complaint, compliance order or referral to the Department of Justice, EPA will give notice to the Commonwealth.

After notice to the Commonwealth, EPA may take action against any person found to be in violation of RCRA pursuant to Sections 3008, 3013, and/or 7003 including the holder of a State-issued permit on the ground that the permittee is not complying with a condition of that permit. In addition, EPA may take action under Sections 3008, 3013, and/or 7003 of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State Program requirements, whether or not that condition was included in the final permit. EPA may take action under RCRA Sections 3008, 3013, and/or 7003 in accordance with the U.S. EPA Hazardous Waste Enforcement Response Policy or the EPA Region III Hazardous Waste Management Division Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

EPA may take corrective action enforcement against any person in accordance with Section 3008(h). Prior to taking enforcement, EPA and the Commonwealth shall negotiate the lead agency for oversight. In the annual grant work plan, facilities will be prioritized and oversight activities established. EPA and the Commonwealth shall coordinate the negotiations, issuance, and oversight of compliance orders issued under Section 3008(h).

B. Commonwealth

1. Compliance Monitoring

The Commonwealth agrees to carry out a timely and effective program for monitoring compliance by regulated hazardous waste facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the Commonwealth will conduct compliance inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. Commonwealth specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

2. Enforcement

The Commonwealth agrees to take timely and appropriate enforcement action and agrees to make Significant Non-Compliance (SNC) designations in accordance with the 1996 Hazardous Waste Enforcement Response Policy and the 1999 Virginia Department of Environmental Quality Enforcement Manual against all persons in violations of hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements.

The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violation submitted by the public. The Commonwealth agrees to retain all records for at least three years unless there is an enforcement action pending. In that case, all records will be retained until three years after such action is resolved.

The Commonwealth agrees to provide 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action which if otherwise delayed could result in substantial damage to either public health or the environment.

COMMONWEALTH
OF VIRGINIA
DEPARTMENT OF
ENVIRONMENTAL QUALITY

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION III

BY: 

BY: 

TITLE: Director

TITLE: Regional Administrator

DATE: 6/17/00

DATE: Jun 17, 2000